IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 150 of 2001

(Old No.4960/1999)

Date of decision:- 05/05/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 05/5/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.150 of 2001
(Old No.4960/1999)

Rajendra Singh Negi (Range Officer)
S/o Sri Shiv Singh Negi
R/o Raiwala Mahdood
Near Kripal Juniior High School Haridwar
At present posted as Range Officer
Kala Garh, District Pauri Garhwal .....Applicant

Versus

1. State of Uttaranchal
2. Veer Pal S/o Yudh Veer
   R/o village Dhiwra Patti
   Ramasini, Tehsil & P.S. Purola
   District Uttarkashi .....Respondents

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 29.01.1999 passed by the Judicial Magistrate, Purola, Uttarkashi in case No.134/1995 under section 319 Cr.P.C. for offences under section 325, 504 & 506 IPC.

2. Heard Sri Pankaj Miglani learned counsel for the applicant and Sri Lalit Verma learned AGA. Notice was sent to the respondent No.2-Veer Pal and it has been reported that the service is sufficient. None is appearing on behalf of the respondent No.2 despite service.

3. Brief facts for disposal of the case are that the respondent No.2 filed a criminal complaint for the offences under section 325, 504, 506 & 147 IPC mentioning the name of three accused persons and two accused were shown as unknown persons. The incident took place on 22.07.1995 at about 4am. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. The Magistrate proceeded as a warrant trial and the statement of the complainant was recorded under section 244 Cr.P.C. and the evidence was

recorded on 19.11.1998 after a lapse of three years. The complainant had stated under section 244 Cr.P.C. that he has come to know the names of two unknown accused persons and these two persons are the applicant and Udai Singh Patwari. He had further stated that he came to know that these two persons were also involved in the offence. The cross examination was deferred and the Magistrate on the application of the complainant summoned the present applicant and Udai Singh Patwari vide its order dated 29.01.1999. Feeling aggrieved by this, the present petition has been filed.

4. I have gone through the impugned order passed by the Magistrate. Perusal of the said order reveals that the Magistrate has passed a cryptic order by which the present applicant and Udai Singh Patwari had been summoned under section 319 Cr.P.C. The Magistrate should have passed a speaking order while summoning them. There is only one sentence in the evidence of the complainant that "*now he had come to know that the applicant and Udai Singh were involved in the offence*". But, the Magistrate had not put question to the complainant that from whom he came to know about the involvement of those persons in the offence. This cryptic order of the Magistrate is not sustainable in the eyes of law. The Magistrate should have either to keep it pending or should have directed to adduce further evidence in that regard. Merely on the basis of hearsay evidence, a person should not be asked to face the trial. Summoning of an accused is a serious matter and it should not be taken lightly. The Magistrate should have seen as to whether the evidence is credible and cogent for summoning the applicant. The applicant and Udai Singh Patwari were summoned merely on the basis of

vague allegations. Therefore, the summoning order passed by the Magistrate is liable to be set-aside.

5. In view of the above discussion, the petition is allowed. Summoning order dated 29.01.1999 against the applicant and Udai Singh passed by the Judicial Magistrate, Purola, Uttarkashi in case No.134/1995 is set aside.

(J. C. S. Rawat, J.)

Dated 05.05.2006
LSR